THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

W.P.No. 12730 OF 1992

Date: 18.08.2006

Sri Ranganathaswamy varu Diety of Gudilova rep., by S.N. Patrudu Chairman of the Trust Board.

... Petitioner

and

1.Gorle Appili wife of Thammayya and two others.

...

Respondents.

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

W.P.No. 12730 OF 1992

JUDGMENT:

Sri Ranganathaswamy Varu Diety, Gudilova, represented by the Chairman of its Trust Board, has approached this Court to have the orders passed in A.T.A.5 of 1988 dated 31.7.1992 of the District Judge, Visakhapatnam confirming the order in A.T.C.3 of 1985 dated 11.3.1988 of the District Munsif, Bhimunipatnam, quashed.

Facts, in brief, are that the petitioner herein filed a petition, before the District Munsif's Court Bheemunipatnam under Section 13(a) and (e) of the Andhra Tenancy Act to evict the respondent from the petition schedule lands and for delivery of possession thereof. The petitioner claimed to be the owner of the land in Paimash Nos.918 of an extent of Ac.1.02 Cents dry land in Sy.No.289/3 and an extent of 0.54 cents of dry land in Sy.No.301.5, totaling an extent of Ac.1.56 cents situated in Sontyam village. The 1st respondent herein was stated to be the cultivating tenant paying an annual rent of Rs.60/-. The eviction proceedings, in A.T.C. No. 3 of 1985, were institute alleging that she had committed wilful default in payment of the rent for the years 1388 to 1392 faslis, that she had sent the rent through her son and had obtained receipts, that she had fallen in arrears of rent from 1393 fasli onwards, that she had colluded with her son

claiming patta for the petition schedule land in the name of her son, that the petitioner had denied title of the respondent whereupon a legal notice was issued to the respondent on 1.8.1985 calling upon her to vacate the schedule land and deliver possession for which a reply was sent through her counsel on 13.8.1985 wherein she alleged that a ryotwari patta was granted to her son and that her son had filed O.S.57 of 1985 on the file of the District Munisf Court, Bheemunipatnam.

The respondent contended that there was no relationship of landlord and tenant between the parties, that she was never the tenant agreeing to pay annual rent nor had she fallen in arrears subsequently or at any time, that her husband was the tenant and after his death, her son became the tenant, that she had never entered into any agreement with the petitioner to pay rent and cultivate the land on her behalf, that her son was the lawful tenant who was granted ryotwari patta by the Government under Inams Abolition which was confirmed under the Records of Rights Act, that her son had filed O.S.No.51/85 against third parties with whom the petitioner had colluded to make unlawful gain and that the petitioner had given evidence on behalf of the defendant in that suit setting up the present contest, that these contentions were negatived by the District Munsif who had granted injunction in favour of her son and that ultimately the suit in O.S.51 of 1985 was decreed. The respondent contended that the petitioner had knowledge but had suppressed all these facts and had come up with this false petition which was not at all maintainable.

The petitioner examined P.Ws.1 and 2 and marked Exs.A-1 to A-19 whereas the respondent examined R.Ws.1 to 3 and marked Exs.B.1 and B.2 The District Munsif placed reliance on

Exs.A-7 and A-14 and held that these exhibits established that the petitioner was the owner of the petition schedule lands, that the entries in Ex.B.1 i.e., the Ryot Patta pass book issued in favour of R.W.2, disclosed that the petitioner was the owner of the schedule lands and that R.W.2 was in occupation of the said lands, that under Ex.B.2, R.W.2 had paid cist on behalf of the petitioner, that the respondent in her counter had also stated that on the death of her husband, her son, R.W.2 had become the tenant, that in her cross-examination R.W.1 had admitted that till his death, her husband was paying the rents to the petitioner – Devasthanam and the Devasthanam used to issue receipts for the rents paid by her husband and later on to her son who had filed O.S.No.51/85 on the file of the District Munsif, Bheemunipatnam, wherein he had taken the plea that the petition schedule lands originally belonged to the petitioner, and that he is the cultivating tenant of the said lands. However, when he came into the witness box, R.W.2 had set up title to the petition schedule lands. R.W.2 had contended that since he had sent rents to the petitioner by money order, receipt of which was refused by the petitioner herein, he had occupancy rights in the petition schedule land and that the petitioner had no right to evict him except demanding rents. The District Munsif disbelieved this contention and held that if R.W.2 had refused to pay rents, then he was certainly liable for eviction. The District Munsif held that it could not be said that the respondent i.e, R.W.1, was the cultivating tenant of the petition schedule lands and that she was liable for eviction from the scheduled land on the ground that she had committed wilful default in payment of rents and had denied the title of the petitioner to the petition schedule lands. The District Munsif dismissed the petition holding that the respondent

was not the cultivating tenant of the petition schedule lands and as such the question of evicting her from the petition schedule lands did not arise.

Aggrieved thereby the petitioner herein preferred appeal in A.T.A.5 of 1988 before the District Court, Visakhaptnam. With regards ownership of the petition schedule lands, the learned District Judge took note of the evidence of P.W.1 that the petition scheduled lands belong to the petitioner – deity, that Ex.A-14 certified copy of No.10(1) account and Ex.A-7 entries in the register maintained under Section 38 of the Endowments Act showed that the petitioner was the owner of the scheduled lands, and that it was not even contended on behalf of the respondent that the petitioner was not the owner of the scheduled lands in question. The learned Judge referred to Section 12 of the Andhra Area Tenancy Act, as it stood prior to the amendment, whereunder, on the death of a cultivating tenant, his widow and his lineal heirs are given the option to continue the tenancy for the un-expired portion of the lease on the same terms and conditions which the deceased – cultivating tenant was holding and that such option shall be exercised by serving a notice in writing on the landlord within three months from the date of demise of such cultivating tenant. The learned District Judge relied on the judgment of this Court in **Veluri Veerabhadramma v. Paladugu Ramaiah**[1] wherein it was held that in order to exercise such an option it was not necessary that a notice must be issued and it was sufficient if it was established that remittance of rent was accepted by the landlord. The learned District Judge held that, in the instant case, since the rent was remitted and accepted by the

land-lord, it showed that there was sufficient exercise of option as contemplated under Section 12 of the A.P. (Andhra Area) Tenancy Act, 1956. The learned District Judge referred to the amended Section 10(5), which came into force from 1.7.1980, and which provided that the rights of cultivating tenants shall, subject to the provisions of Sections 12 and 13, be heritable. The learned District Judge referred to explanation I to Section 10 and held that, in view of Section 12 prior to the amendment, not only the widow but also the lineal descendants were entitled to inheritance, and as the cultivating tenant was the husband of the respondent it must be held that since the respondent was a minor, acceptance of rent from the respondent during that period, must be for the benefit of the respondent as well as her son and that it could not be said that the respondent alone was the cultivating tenant after the death of her husband. The learned District Judge took note of the fact that P.W.1, in his cross examination, had stated that tenancy of the said lands continued in favour of the respondent after the death of her husband, that no lease was obtained by her, that no proceedings were passed by the Trust Board to continue the respondent as the cultivating tenant and since the respondent was a family member of the cultivating tenant there was no necessity to issue proceedings allowing her to continue in the petition schedule lands. The learned District Judge also took note of the evidence of P.W.1 that the respondent's name was incorporated in the records after the death of the cultivating tenant, that the cultivating tenant had a son, that except the receipts and property register, no document had been obtained from the respondent to show that she alone was the cultivating tenant and, since the children of the cultivating tenant were minors on the date of his

death, the transfer was effected in favour of the respondent. The learned District Judge held that since under the pre-amended Section 12 not only the widow but also the son must be deemed to be the cultivating tenant, and there was no practice of obtaining the signature of the person who paid the rent, both the respondent as well as her son must be deemed to have been the cultivating tenants, and that any rent paid by the respondent was for the benefit of her minor son who had since become a major and in whose favour a ryotwari patta was subsequent issued by the Government. The learned District Judge held that, when the cultivating tenant died in the year 1972, the pre-amended Section 12 was applicable and in such a case not only her son (R.W.2) but also the respondent must be deemed to have inherited the tenancy and even assuming that R.W.1 was paying the rents, it was not only for herself but also on behalf of the minor son. The learned District Judge held that, the mere fact that the Devasthanam had recognized the respondent as its tenant, did not mean that R.W.2, who was the son of the cultivating tenant, could not be said to be the heir along with the respondent who inherited the tenancy. The learned Judge also took note of the fact that R.W.2 was the only son of R.W.1 and that both R.W.1 and R.W.2 were residing separately. The learned District Judge held that the petition for eviction, against the respondent alone, was not maintainable because the tenancy rights were inherited not only by the widow of the deceased cultivating tenant but also her son. The learned District Judge held that there were no merits in the appeal and that he did not see any ground to differ from the findings of the District Munsif. The appeal filed by the petitioner herein was dismissed.

Sri M.Adinarayana Raju, learned counsel for the petitioner,

would refer to the provisions of Section 13(a) and (e) of Andhra Area Tenancy Act and submit that among the grounds on which a cultivating tenant could be evicted from the scheduled lands, was failure to pay rents within one month from the stipulated date. Learned counsel would submit that under Section 12 of the Andhra Area Tenancy Act, as it stood prior to its amendment, on the death of a cultivating tenant an option to continue the tenancy for the un-expired portion of the lease, on the same terms and conditions on which the deceased cultivating tenant was holding, was required to be exercised by the widow and the lineal heirs, and that too by serving a notice on the landlord within a period of three months from the date of demise of such cultivating tenant. Learned counsel would submit that unlike Section 10, after its amendment, wherein, the rights of a cultivating tenant are heritable, the pre-amended Section 12 does not provide for inheritance of the rights of a cultivating tenant and it is only on an option being exercised, would the rights enure to the benefit of the widow and the lineal heirs. Learned counsel would submit that, in the absence of any option being exercised, the tenancy would cease under Section 12 as it stood prior to the amendment, unlike Section 10(5), after the amendment, which provides for inheritance of the rights of the cultivating tenant. Learned counsel would submit that, since it was the respondent who by paying rents had exercised the option, it is she alone who had stepped into the shoes of the cultivating tenant and not her son who had chosen not to exercise the option. Learned counsel would submit that the findings recorded by the appellate court that the rights devolved not only on the respondent but also on her son by inheritance was a perverse finding and was contrary to the applicable statutory provisions. Learned counsel

would contend that even if R.W.2 was a minor and a liberal interpretation is placed on Section 12, as it stood prior to its amendment, since R.W.2 had deposed before the District Munsif and it was not even his case that he was a tenant, the question of his being deemed to be a tenant, did not arise. Learned counsel would further submit that the land belonged to the temple and an interpretation, which would deny the temple its rights to possession of its lands, could not be placed on Section 12, as it stood prior to its amendment.

Sri C. Sadasiva Reddy, learned counsel for the respondent, would however submit that the word 'inheritance' has been used loosely by the appellate court and what was held was that the option deemed to have been exercised under Section 12 by the widow of the cultivating tenant was both on her behalf and on behalf of her minor son. Learned counsel would submit that since R.W.2 was admittedly a minor, in 1972 when the cultivating tenant died, it was the respondent alone who could have represented her minor son and not the minor himself. According to the learned counsel, since Section 12 provides for an option to be exercised by the widow and the lineal heirs, and as no notice was given in writing by the respondent claiming that she alone had exercised the option, and it was a case where payment of rent and acceptance thereof was deemed to be an exercise of option, it could not be said that the respondent had exercised option only on her behalf and not on behalf of her son. Learned counsel would submit that the option which can be exercised under Section 12 is only by the widow and the lineal heirs and not by others and it is in this context that the appellate court had used the word "inheritance" as both the widow and the lineal heirs must be

deemed to have inherited the rights of the deceased and to continue as a cultivating tenant on the exercise of an option. Learned counsel would submit that the respondent and her son did not claim automatic inheritance under Section 10(5) of the amended Act, but only under Section 12 as it stood prior to its amendment since the deemed option, by paying rents, must be held to have been exercised by the widow both on her behalf and on behalf of her minor son. Learned counsel would submit that irrespective of the manner in which the petitioner herein had made entries in its records, since in law both the respondent and her son must be deemed to be the cultivating tenants, the eviction petition should have been filed against both the respondent and her son and since it was filed only against the respondent, both the courts below had rightly come to the conclusion that the eviction proceedings were not maintainable. Learned counsel would submit that the findings of fact, as recorded by both the courts below, could not be re-appreciated by this Court in proceedings under Article 226 of the Constitution of India and that the orders passed in A.T.A.5 of 1988 and A.T.C.3 of 1985 did not call for interference.

Before examining the rival contention it is necessary to take note of the relevant statutory provisions. Section 12 and 13 of the Andhra Pradesh (Andhra Area) Tenancy Act, 1956, as it stood prior to its amendment, read thus:

"12.If a cultivating tenant dies, his widow and his lineal heirs shall have the option to continue the tenancy for the unexpired portion of the lease on the same terms and conditions on which the deceased cultivating tenant was holding; and such option shall be exercised by serving a notice in writing on the landlord within a period three months from the date of demise of such cultivating tenant.

13. Notwithstanding anything contained in sections 10, 11 and 12, no landlord

shall be entitled to terminate the tenancy and evict his cultivating tenant during the currency of a lease except by an application made in that behalf to the Tahsildar, and unless such cultivating tenant.

a. has failed to pay the rent due by him within a period of one month from the date stipulated in the lease deed, or in the absence of such stipulation, within a period of one month from the date on which the rent is due according to the usage of the locality, and in case the rent is payable in the form of a share in the produce, has failed to deliver the procedure at the time of harvest; or
b. has done any act or has been guilty of any neglect, which is destructive of, or permanently injurious to, the land; or
c. has sub-let the land; or
d. has violated any of the conditions of the tenancy regarding the uses to which the land may be put; or
e. has willfully denied the landlord's title to the land; or
f. has failed to comply with any order passed or direction issued by the Tahsildar or the Revenue Divisional Officer under this Act.

Section 10, after its amendment by Act 39 of 1974 with effect from 1.7.1980, reads thus:

10. Rights of cultivating tenants:-

(1). Every lease subsisting at the commencement of the Andhra Pradesh (Andhra Area) Tenancy (Amendment) Act, 1974, shall be deemed to be in perpetuity.

(2). Every lease entered into between a landlord and his cultivating tenant on or after the commencement of the Andhra Pradesh (Andhra Area) Tenancy (Amendment) Act, 1974 shall be for a minimum period of six years. Every such lease shall be in writing and shall specify the holding its extent and the rent payable therefore with such other particulars as may be prescribed. The stamp and registration charges for every such lease shall be borne by the landlord and the cultivating tenant in equal shares.

(3) On the expiration of the period of lease referred to in sub-section(2) every such lease shall be renewable successively for a further minimum period of six years at a time. Every such renewal shall be governed by the same terms and conditions as under the original lease and be subject to the provisions of Section 3 and 6.

Notwithstanding anything in any law for the time being in force, or any custom, decree or contract to the contrary, it shall be lawful for a cultivating tenant to mortgage, or create a charge on, his interest in the land in favour of the Government, a co-operative society including a land mortgage bank, or any other institution, in consideration of a loan advanced to him by the Government, co-operative society or institution, as the case may be, under the relevant law relating to the grant of loans to agriculturists for the time

being in force in the State and without prejudice to any other remedy open to the Government, co-operative society or institution, in the event of the cultivating tenant making a default in payment of such loan in accordance with the terms on which it was advanced, it shall be lawful for the Government, co-operative society or institution, as the case may be, to cause his interest in the land to be sold, and the proceeds thereof to be applied in payment of such loan.

(5). All rights of cultivating tenant under this section shall, subject to the provisions of Sections 12 and 13, be heritable.

Explanation I:- For the purpose of construing the term "heritable" in this section, the following persons only shall be deemed to be heirs of a cultivating tenant, namely:-

(a) his legitimate lineal descedants by blood or adoption;

(b) in the absence of any such descendants, his widow for so long as she does not re-marry:

Provided that where there is more than one heir, the heirs shall be entitled to sub-divide the interest in the holding according to their shares.

Explanation II:- If a cultivating tenant dies without leaving any heir as aforesaid, all his rights shall be extinguished.

While, under pre-amended Section 12, the widow and the lineal heirs of a cultivating tenant, had been given the option of continuing the tenancy, under Section 10(5), after the amendment, the rights of a cultivating are heritable. It is, however, necessary to note that the option which Section 12, prior to its amendment, permits exercise of is restricted only to the widow and the lineal heirs and no other person is entitled to exercise the option for being continued as a cultivating tenant. While the tenancy rights of a cultivating tenant, as rightly contended by Sri M.Adinarayana Raju, learned counsel for the petitioner are strictly "not heritable", it cannot be lost sight of that the option deemed to have been exercised by the widow, was not only on her behalf but on behalf of her minor son also. It is not in dispute that the minor son could not have exercised the option. It is also not in dispute that no specific option in writing was exercised by the respondent much

less the option claiming that she alone be treated as the cultivating tenant on the death of her husband. The act of payment of rent by the respondent and receipt thereof by the petitioner, in view of the law laid down by this Court in **Veluri Veera Bhadramma**[1], must be deemed to be an exercise of option. It cannot therefore be said that the option was exercised by the respondent only on her behalf and not on behalf of her minor son. It must also be remembered that the District Court is the final Court of fact and the findings of fact recorded by the learned District Munsif and the learned District Judge, cannot be re-appreciated in proceedings under Article 226 of the Constitution India, nor would this Court sit in appeal over the conclusions arrived at by these fact finding Tribunals.

The conclusions arrived at by the Courts below, that the option must be deemed to have been exercised by the respondent – widow both on her behalf and on behalf of her minor son, does not call for interference. While it is true, as contended by Sri M.Adinarayana Raju, learned counsel for the petitioner, that R.W.2 (son of the cultivating tenant) did not claim to be the tenant, and on the other hand claimed to be the owner of the property, both the Courts below have recorded the finding that the petitioner is the owner of the property in question. Under Section 12(a), as it stood prior to its amendment, the landlord is entitled to evict the cultivating tenant, if he fails to pay the rent due within a period of one month from the stipulated period. Eviction proceedings can be instituted only against the cultivating tenants and since the courts below have held that both the widow and her son are the cultivating tenants, the petitioner herein could not have instituted the eviction proceedings against respondent-widow alone and

instead ought to have instituted the proceeding both against the widow and her son. I see no reason, therefore, to interfere with the orders passed either in A.T.A.5 of 1988 or in A.T.C.3 of 1985.

The writ petition fails and is accordingly dismissed. No order as to costs.

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[1] 1977(1) APLJ 391